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No. 80-1997

In the Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL ASSOCIATION OF FISH & WILDLIFE AGENCIES, PETITIONER

v.

DEFENDERS OF WILDLIFE, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the determination by the Endangered Species Scientific Authority, in carrying out the United States' obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, that the export of bobcat pelts and parts would not be detrimental to the survival of the bobcat species is subject to judicial review.

2. Whether, if the Scientific Authority's determination is subject to judicial review, the Authority's finding that the export would not be detrimental to the survival of the species was required to be based on a reliable estimate of the bobcat population.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is not yet reported. The opinion of the district court (Pet. App. 30a-36a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 39a) was entered on February 3, 1981. The petition for rehearing was denied on February 26, 1981 (Pet. App. 41a). The petition for a writ of certiorari was filed on May 27, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249 (Pet. App. 42a-66a), obligates the contracting states to control the export of species of wild fauna and flora that are threatened with extinction or that may be so threatened unless trade in specimens of the species is subject to strict regulation. See Art. II, 27 U.S.T. 1092. Appendix I to the Convention lists species that are now threatened with extinction, and Appendix II lists species that may be threatened unless trade in the species is regulated. *Ibid.*

Under Article IV, Paragraph 2, of the Convention (27 U.S.T. 1095), a permit is required for the export from any contracting state of a specimen of a species listed in Appendix II. Such an export permit may be granted only if a Scientific Authority of the contracting state has advised that the export "will not be detrimental to the survival of that species" and a Management Authority responsible for issuing export permits in the contracting state is satisfied that the specimen was not obtained in contravention of the laws of that state for the protection of fauna and flora. Art. IV, ¶¶ 2(a) and (b); Art. IX, ¶ (1)(a) (27 U.S.T. 1095, 1103).

b. By resolution of August 3, 1973, the Senate gave its advice and consent to ratification of the Convention, and the President ratified the Convention on behalf of the United States on September 13, 1973 (27 U.S.T. 1089).[1] On December 28, 1973, the Endangered Species Act of 1973 became law. Pub. L. No. 93-205, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

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[1] The Convention entered into force on July 1, 1975. Art. XXII, ¶ 1, 27 U.S.T. 1115 & n.1.

Portions of that Act were intended to implement the Convention. In particular, Section 8(e) of the Endangered Species Act (16 U.S.C. 1537(e)) provided [2] in pertinent part:

> The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates.[3]

Pursuant to Section 8(e) and Article IX of the Convention, the President designated the Secretary of the Interior as the United States' Management Authority and established the Endangered Species Scientific Authority (ESSA) to act as the United States' Scientific Authority for purposes of the Convention. See Exec. Order No. 11911, 41 Fed. Reg. 15683 (1976). ESSA was composed of "scientifically qualified" representatives of the Departments of Interior, Agriculture, Commerce, and HEW and representatives of the National Science Foundation, the Council on Environmental Quality, and the Smithsonian Institution.

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[2] Section 8(e) has since been repealed by Section 5(4) of the Act of Dec. 28, 1979, Pub. L. No. 96-159, 93 Stat. 1228, 16 U.S.C. (Supp. III) 1537(e), and Congress has since directed the Secretary of the Interior to act as both the Management Authority and the Scientific Authority for purposes of the Convention. See page 4, *infra*.

[3] In addition, Section 9(c) of the Act, which is still in effect (16 U.S.C. 1538(c)), makes it unlawful for any person subject to the jurisdiction of the United States to engage in trade in specimens contrary to the provisions of the Convention, and Sections 11(a) and (b) of the Act (16 U.S.C. 1540(a) and (b)) provide civil and criminal sanctions for violations of this prohibition.

Exec. Order No. 11911, Section 3(b), 41 Fed. Reg. 15683 (1976). Although members of ESSA are among the named defendants in the instant suit, Congress has since abolished ESSA and directed the Secretary of the Interior to act as both the Scientific Authority and the Management Authority for purposes of the Convention. See 16 U.S.C. (Supp. III) 1537a(a)-(c), as added by the Act of Dec. 28, 1979, Pub. L. No. 96-159, Section 6(a)(1), 93 Stat. 1228.

2. Because the entire cat family (*Felidae*) has been listed in Appendix II of the Convention (27 U.S.T. 1135), the export of bobcat parts or pelts from the United States is prohibited absent a finding by the Scientific Authority for the United States—in this case, ESSA—that the export "will not be detrimental to the survival" of the bobcat species. Art. IV, ¶ 2(a) (27 U.S.T. 1095).[4] Since 1978, the Scientific Authority (ESSA or, subsequently, the Secretary) has made its "no detriment" findings for bobcat exports annually, before the start of the hunting and trapping seasons set by most states. As the court of appeals noted with approval (Pet. App. 7a, 23a-24a), the Scientific Authority has based its "no detriment" findings on a state-by-state assessment of the status of bobcats. Depending upon the distribution

[4] The Convention, as implemented domestically by the Endangered Species Act, stands as the sole conservation provision for bobcats at the federal level. The bobcat is not listed as an endangered or threatened species pursuant to Section 4 of the Endangered Species Act, 16 U.S.C. 1533, and no other Act of Congress of general application regulates the hunting, trapping, or conservation of bobcats. To the extent that the taking of bobcats is regulated in the United States independently of the Convention, this is accomplished, pursuant to state law, by the wildlife management agencies of the several states.

of bobcats, therefore, the export from the United States of bobcats killed in one state might be limited or prohibited under the Convention, as implemented, while export of bobcats killed in other states might be permitted.

On April 10, 1978, ESSA published guidelines describing generally the data that should be submitted by the states and others to assist ESSA in making its export determinations for the 1978-1979 season. 43 Fed. Reg. 15097. These export determinations were made later in 1978. Pet. App. 9a. The following year, ESSA announced that it would follow the 1978 guidelines in making its findings for the export of bobcats to be taken during the 1979-1980 season. 44 Fed. Reg. 40841 (1979).

On September 26, 1979, ESSA published its findings that the export of bobcats killed during the 1979-1980 season in 34 states and the Navajo Indian Nation would "not be detrimental to the survival of the species" and to the survival of similar felid species included in the Convention's appendices. 44 Fed. Reg. 55539, 55546-55547. For the 35th state, New Mexico, an export quota of 6,000 bobcat pelts was imposed. *Id.* at 55547.

3. a. On November 9, 1979, respondent Defenders of Wildlife filed suit against the federal respondents, in their capacities as the Management Authority under the Convention and, in the case of the officials of ESSA, in their then-capacities as the Scientific Authority under the Convention. Defenders of Wildlife contended that ESSA's "no detriment" findings for the export of bobcat taken during the 1979-1980 season and the 1978 guidelines on which these findings were based were in violation of the Convention. Defenders sought a preliminary and permanent injunction against the export of bobcats killed in any

state during the 1979-1980 season (Pet. App. 30a-31a).[5]

On December 12, 1979, the district court issued its memorandum opinion and judgment (Pet. App. 30a-38a).[6] The district court did not set aside ESSA's 1978 guidelines. The court did, however, prohibit the federal respondents from permitting the export of bobcat parts and pelts taken during the 1979-1980 season in Wisconsin, Florida, New Mexico, North Dakota, Massachusetts, eastern Oregon, and the high plains ecological area of Texas, on the ground that the data submitted to ESSA regarding the status and distribution of bobcats in these states or parts of states were inadequate or that the state bobcat management program was inadequate (Pet. App. 34a-36a). The district court denied all other relief and dismissed the remainder of the case, thereby permitting bobcat exports from the remaining states.

b. On the cross-appeals of the non-federal parties, the court of appeals invalidated the 1978 guidelines to the extent that they permitted ESSA to make a

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[5] Defenders also challenged the export control regulations (50 C.F.R. Part 23) issued by the Fish and Wildlife Service of the Interior Department, acting as the Management Authority under the Convention, and further sought a declaratory judgment that the Management Authority was failing to perform certain duties under the Convention. The district court rejected this challenge (Pet. App. 32a), and the court of appeals affirmed (Pet. App. 24a-26a). This issue is not presented in the petition in the instant case.

[6] The district court determined (Pet. App. 33a) that it had jurisdiction of the case under 28 U.S.C. 1331. In our view, however, the "citizen suit" provision in Section 11(g) of the Endangered Species Act, 16 U.S.C. 1540(g), provides the exclusive jurisdictional base for this suit. Cf. *Middlesex County Sewerage Authority* v. *National Sea Clammers Ass'n*, No. 79-1711 (June 25, 1981), slip op. 11-16.

determination that the export of bobcats would "not be detrimental to the survival of the species" based on the impact the projected kill of bobcats in a particular state would have on the *trend* in the bobcat population of that state, rather than its impact on the estimated *total population* of bobcats in the state. The court of appeals rejected the use of population trend information as "too conjectural and speculative" (Pet. App. 18a).[7] Accordingly, the court of appeals instructed the district court, on remand, to review ESSA's administrative record for the 1979-1980 bobcat season to determine whether ESSA's "no-detriment" findings for the 35 states and the

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[7] Population trend information indicates generally a population's present and probable future increase, decrease, and distribution without reference to the total numbers of that population. Population trend information is one item listed in the 1978 guidelines among the "Minimum Requirements for Biological Information" to be submitted by a state in order for ESSA to make a "no detriment" finding with respect to bobcats taken in that state. 43 Fed. Reg. 15099 (1978). Other information requested pertained to total harvest and distribution of the species, as well as habitat evaluation. *Ibid.*

These "Minimum Requirements" were accompanied by the following explanation of the use of population trend information (43 Fed. Reg. 15099 (1978); emphasis added):

> As one alternative to evaluating impact of harvest by comparing harvest level with population *size*, * * * ESSA may rely to some extent upon analysis of population *age structure*. Given several assumptions, age structure permits estimation of recruitment and loss in a population, *indicating whether the population is increasing, decreasing, or stable.* The results of this analysis can then be related to harvest (cf. Tabor and Wight, 1977, J. Wildl. Mgmt., 41: 692). Such analyses would be useful if done annually, particularly if coupled with habitat evaluation and with comparison of current density with density at carrying capacity.

Navajo Nation were supported by data showing bobcat population estimates and the number of bobcats to be killed (Pet. App. 19a-21a).

c. On remand, respondent Defenders of Wildlife abandoned its challenge to the export of bobcats taken during the 1979-1980 season and other past seasons. As to future years, the district court entered a permanent injunction prohibiting the federal respondents from permitting the export of bobcats taken after July 1, 1981, until the responsible federal agencies issued new guidelines consistent with the court of appeals' decision. See Defenders of Wildlife Br. in Opp. 1A-2A.

On May 26, 1981, the Fish and Wildlife Service of the Department of the Interior published a notice containing the additional criteria upon which it intended to rely in making "no detriment" determinations for the export of bobcats taken during the 1981-1982 season in the several states. 46 Fed. Reg. 28192-28195. In accordance with the decision of the court of appeals in the instant case, the Service requested the states to furnish an estimate of the bobcat population within their borders, as well as other information. *Id.* at 28193-28194. The information requested from the states was to be submitted by July 1, 1981. *Id.* at 28195. The Fish and Wildlife Service is now reviewing the submissions by the states.

ARGUMENT

Unlike petitioner, we do not argue in the circumstances of this case that the actions of the federal respondents are altogether immune from judicial scrutiny merely because they were taken to implement the United States' obligations under an international convention. We do, however, agree with petitioner

that the court of appeals erred in substituting its judgment for that of the responsible federal officials regarding the appropriate means by which to determine whether the export of bobcat parts and pelts will be detrimental to the survival of the species. Although we believe that the court of appeals erred in the latter regard, we are unable to conclude that further review is necessary at this time. It is possible that the population data submitted by the states in response to the Interior Department's May 26, 1981 notice will include (or form the basis for the Department to make) reliable estimates of the bobcat population in the respective states, thereby allowing the Interior Department to permit the export of bobcat parts and pelts in a manner that is consistent with the court of appeals' decision. This Court may wish to wait until the Department of the Interior has reviewed and made findings on the basis of the new data, and until the lower courts have had an opportunity to evaluate any such findings, before deciding whether review of the legal issues presented here is warranted.

1. Petitioner argues (Pet. 8-13) that the Convention on International Trade in Endangered Species of Wild Fauna and Flora cannot form the basis for the assertion of rights in domestic courts because the Convention "contemplates an implementing scheme to be elaborated by agencies of the executive branch" (Pet. 9) and is therefore not "self-executing" (*ibid.*). We agree with petitioner (Pet. 9 n.5) that the Convention is not self-executing in the sense that, standing alone, it is the source of rights that may be enforced by litigants in domestic courts. In this respect, the Convention, even after the Senate gave its advice and consent to ratification of the Convention, is like a contract that "the legislature must execute * * * before it can become a rule for the court" (*Foster* v.

Nielson, 27 U.S. (2 Pet.) 253, 314 (1829)). But here Congress *has* implemented the Convention through legislation—the Endangered Species Act—and that Act reasonably may be read to provide a basis for judicial review, within narrow confines, of the Executive's actions in granting or denying an export permit.

As codified, the citizen suit section of the Endangered Species Act—which, in our view, provides the sole basis of jurisdiction in the present case (see note 6, *supra*)—authorizes any person to commence a civil action "to enjoin any person, *including the United States and any other governmental instrumentality or agency* * * * who is alleged to be in violation of any provision of this chapter * * *." 16 U.S.C. 1540(g)(1)(A) (emphasis added). Section 8(e) of the Act, as in effect when this case arose, provided that "[t]he President is authorized and directed to designate agencies" to act as the Scientific and Management Authorities under the Convention and that these agencies "shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates." 16 U.S.C. 1537(e). If the agencies designated by the President failed to perform the permit-related functions specifically assigned to them under the Convention and Section 8(e) of the Endangered Species Act, these agencies would appear to have been "in violation" of Section 8(e) and, therefore, to be subject to suit under 16 U.S.C. 1540(g)(1)(A). Thus, we acknowledge that the language of the Endangered Species Act seems to afford a right of judicial review in a case such as this.

As the court of appeals observed, moreover, the legislative history of the Endangered Species Act "confirms that Congress thereby intended to implement the Convention" (Pet. App. 11a). The Senate

report on the 1973 Act states, for example, that the Act "provides a means for implementation of the regulations of the Convention * * * [and] the means to establish the appropriate management and scientific authorities" (S. Rep. No. 93-307, 93d Cong., 1st Sess. 5-6 (1973)).

The 1979 amendments to the Act similarly direct the Executive to implement the Convention. Subsections (b) and (c) of Section 8A of the Act, added in 1979, provide that the Secretary of the Interior "shall do all things necessary and appropriate to carry out the functions of the Management Authority * * * [and] of the Scientific Authority under the Convention." 16 U.S.C. (Supp. III) 1537a(b) and (c). The conference report on the 1979 amendments describes Section 8A as a means to "facilitate the coordinated implementation of the * * * Convention" (H.R. Conf. Rep. No. 96-697, 96th Cong., 1st Sess. 17 (1979)). The same committee, in discussing the requirement in Section 8A(d)(7), 16 U.S.C. (Supp. III) 1537a(d)(7), that certain decisions of the Scientific Authority be published in the Federal Register, stated that "[t]he Secretary should provide an opportunity for public comment on all Management Authority and Scientific Authority decisions" (H.R. Conf. Rep. No. 96-697, *supra*, at 18). This passage reasonably may be read to reflect an understanding that the domestic agencies charged with implementing the Convention would do so within a procedural framework similar, if not identical, to the rulemaking procedures described in the Administrative Procedure Act, 5 U.S.C. 553. If so, a presumption in favor of judicial review of agency action, similar to that under the APA,[8] reasonably may be thought to apply to the

[8] See, *e.g.*, *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 140 (1967).

Executive's issuance or denial of permits under the Convention, in order to determine whether such decisions are arbitrary, capricious, abuses of discretion, or not in accordance with relevant law. Compare 5 U.S.C. 706(2)(A).

In view of this background, we do not join petitioner in its submission that the Executive's decisions granting or denying permits under the Convention, and the "no detriment" findings on which these decisions must be based, are wholly immune from judicial review.

2. However, we agree with petitioner, largely for the reasons it advances (Pet. 13-16), that the court of appeals erred in concluding that the federal respondents could not make a valid "no detriment" finding without "a reliable estimate of the number of bobcats" in each state (Pet. App. 19a). Article IV, Paragraph 2, of the Convention, which requires each party's Scientific Authority to make a "no detriment" finding before an Appendix II species may be exported, does not on its face mandate any particular procedure or methodology to be followed in making such a finding. Nor does the Endangered Species Act. Thus, both the Convention and the Act would appear to vest considerable discretion in the Scientific Authority in carrying out its functions. Cf. *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309 317-319 (1958).

The court of appeals did not explain what abuse of agency discretion it found when it invalidated ESSA's 1978 guidelines. Rather, the court of appeals seems to have reached its conclusion as a matter of abstract "logic," relying solely on a bare assertion of its lack of understanding as to "how, without adequate information on total bobcat population and the number to be killed in a particular season, the Scientific Authority can make a valid deter-

mination of 'no detriment' " (Pet. App. 17a). In fact, although the court of appeals did not acknowledge the point, the 1978 guidelines themselves furnish such an explanation: an evaluation of the age of the specimens taken in successive years can disclose whether the population as a whole is increasing, decreasing, or stable. 43 Fed. Reg. 15099 (1978); see note 7, *supra*. Moreover, the administrative record and expert trial testimony demonstrate that informed "no detriment" findings, as well as other wildlife management decisions, need not be based on estimates of the *actual* population of a species, but may instead be based on evidence of population trends derived from surveys and other indirect indices showing increase, decrease, and distribution of a species (see Pet. 6-7; J.A. 411, 474-475, 534-536, 543).[9] Where the administrative record, as amplified by trial testimony, demonstrates in this fashion that the agency's decision has a "rational basis" in scientific practice, a federal court may not set aside the decision under the "arbitrary and capricious" standard of review. *FCC* v. *National Citizens Commission for Broadcasting*, 436 U.S. 775, 802-803, 808-809, 815 (1978). Thus, the court of appeals simply has substituted its judgment for that of the expert agency—a result foreclosed by this Court's past decisions. *Id.* at 803, citing *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 413-416 (1971).

3. Although we believe the court of appeals erred, we have not requested the Court to review the decision below at this time. The court of appeals permitted the Scientific Authority for the United States

[9] "J.A." refers to the Joint Appendix in the court of appeals. For example, an expert for the federal respondents testified that "this is the normal process that is used in wildlife ecology and management" (J.A. 536).

—now the Secretary of the Interior—a broad discretion in designing a methodology for developing the population estimates the court found to be necessary. The court stated (Pet. App. 19a):

> We recognize that, because of the secretive nature of the bobcat's life and behavior, it is difficult to obtain accurate information about the size of the bobcat population. There are indications that techniques for making more accurate population estimates can and may be developed. We do not suggest that the Scientific Authority may base a no-detriment finding only upon some kind of head count of the animals or some other method of measurement that, as a practical matter, would be virtually impossible to make. All the Scientific Authority is required to do is to have a reasonably accurate estimate of the bobcat population before it makes a no-detriment finding. The Scientific Authority has considerable discretion to determine the method by which that estimate may be made and in evaluating its reliability.

In response to the court's flexible mandate, the Fish and Wildlife Service of the Department of the Interior has issued new guidelines in preparation for the Department's review of data submitted by the states for the forthcoming 1981-1982 bobcat season. In these new guidelines, the list in the 1978 guidelines of biological information that must be submitted by a state in order for the Service to make a "no detriment" finding for that state (see note 7, *supra*), has been expanded to include (46 Fed. Reg. 28193 (1981)):

> a. An estimate of the size of the statewide population, including a description of: (i) how it is calculated, with an indication of the geo-

> graphic areas where data used in the calculations were gathered, (ii) how it accommodates differences in abundance over the range of habitat occupied by the species, and (iii) the confidence limits on the estimate.[10]

The list of attributes a state management program must have also has been expanded to include (46 Fed. Reg. 28194 (1981)):

> a. Harvest level objective for the 1981-82 season (anticipated total statewide harvest of the species). Please describe: (i) how this figure is derived, and (ii) how biological information is used in setting the harvest level objective.
>
> b. A description of methods used to insure that the actual harvest will not substantially exceed the harvest level objective.

These provisions were intended to meet the requirements imposed by the court of appeals (*ibid.*). A number of states have submitted material in response to these latest guidelines, and the Department of the Interior is now reviewing the states' submissions to determine whether they will form the basis for reliable estimates of the bobcat population in the respective states.

Given these recent amendments of the governing regulatory provisions, the impact of the court of appeals' decision on the federal respondents' administration of the Convention necessarily is speculative at the present time. If the Fish and Wildlife Service is able to make "no detriment" findings for some or

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[10] In addition, the new guidelines request the states to furnish information about research on the distribution, abundance, and general condition of the bobcat, as well as an assessment of long-term population trends and the relationship of these trends to habitat condition, management practices, harvesting pressures, and other factors. 46 Fed. Reg. 28193-28194 (1981).

all of the states on the basis of information furnished under the revised guidelines, respondent Defenders of Wildlife may seek judicial review of the amended guidelines and the Service's findings under them. On the other hand, if the Service determines that it cannot make "no detriment" findings for the export of bobcats taken in some or all states under the amended guidelines—*e.g.*, because the data submitted by the states do not form the basis for making a "reliable" estimate of bobcat population—petitioner may seek judicial review of that determination on behalf of the wildlife management agencies in the affected states. The Court therefore may wish to afford the lower courts an opportunity to consider the new guidelines and any findings made under them before granting review of the legal issues presented in the petition.

Thus, we cannot predict with confidence whether the court of appeals' decision will prove to be a bar to any substantial export of bobcats taken during the 1981-1982 season and in future years or whether, instead, the states will be able to supply the necessary population data this year, or in subsequent years, to permit "no detriment" findings to be made. Nor is it apparent at the present time that the submission of the population data necessary to support "no detriment" findings under the court of appeals' decision will impose an unacceptably heavy burden on the states.[11] There will be time enough at a later date for

[11] Petitioner has not, in our view, demonstrated that the court of appeals' decision will necessarily result in the devotion of an undue portion of state wildlife management resources to programs concerning bobcats. For example, we are unable to conclude at the present time that the decision below will require in each state and in each year the type of intensive trapping and tagging of bobcats petitioner contends would be necessary in each of 10 study areas in New Mexico

review by this Court once the consequences of the court of appeals' decision have been brought more sharply into focus.[12]

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alone. See Pet. 17. Even assuming such an intensive effort would be required at some locations, it is possible that population estimates developed in one state could be relied upon in making estimates for comparable habitats in other states or in other years, or that estimates for one type of habitat could, with appropriate adjustments, be relied upon for other types of habitats. Moreover, where the reliability of estimates may be questioned, the Fish and Wildlife Service nonetheless might be able to make "no detriment" findings after making special allowances for estimation errors. The court of appeals recognized that the Scientific Authority must have broad discretion in assessing and crediting population estimates (Pet. App. 19a), and we are not prepared at the present time to conclude that the court of appeals intended to require the impossible.

[12] Petitioner also contends (Pet. 17-18) that the court of appeals' requirement of reliable population estimates would be especially onerous if it were extended to other federal wildlife management programs, such as that under Section 4 of the Endangered Species Act, 16 U.S.C. 1533. See also the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*; the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*; and the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. 1331 *et seq.* However, the court of appeals purported to rest its decision on the language of the Convention itself. See Pet. App. 15a-19a. The statutes just cited therefore are not directly affected by the decision below. If the court's analysis nevertheless is extended to cases arising under these statutes in the future, review may be sought in the appropriate case.

CONCLUSION

In all the circumstances, we are unable to conclude that further review is necessary at this time.

Respectfully submitted.

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